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Working Paper

Excusable consent in duress

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ABSTRACT:

While the illegitimate pressure theory provides a more satisfactory theoretical basis for duress in contract law than the overborne will theory, it insufficiently addresses why a victim who has given deliberated consent should be excused from contractual responsibility. The paper proposes that the additional element of 'excusable consent' enhances the current analytical framework: first, by recognising that the law makes value judgments of both the threatening party's actions and the victim's response; secondly, by lightening the burden of the illegitimate pressure element and providing it greater focus; and, thirdly, by providing a better fit for considerations such as 'no practical alternatives' that strain the existing framework.

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